

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

GREGORY A. LASKA,)	
)	
Appellant,)	Case Nos. 09A 029, 09A 030 & 09A 031
)	
v.)	DECISION AND ORDER
)	AFFIRMING THE DECISIONS OF
KNOX COUNTY BOARD OF EQUALIZATION,)	THE KNOX COUNTY BOARD OF EQUALIZATION
)	
Appellee.)	

The above-captioned cases were called for a hearing on the merits of appeals by Gregory A. Laska ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 920 S. 20th St., Norfolk, Nebraska, on August 17, 2010, pursuant to an Order for Hearing and Notice of Hearing issued June 17, 2010. Commissioner Warnes, Vice-Chairperson of the Commission, was the presiding hearing officer. Commissioner Wickersham, Chairperson of the Commission, was absent. Commissioner Warnes, as Vice-Chairperson acting in the absence of the Chairperson, designated Commissioners Warnes, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Hotz was excused. Commissioner Salmon was present. The appeal was heard by a quorum of a panel of the Commission.

Gregory A. Laska was present at the hearing. No one appeared as legal counsel for the Taxpayer.

John Thomas, County Attorney for Knox County, Nebraska, was present as legal counsel for the Knox County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits, and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Reissue 2009). The final decision and order of the Commission in the consolidated cases is as follows.

**I.
ISSUES**

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board, determining taxable value of the subject property, is unreasonable or arbitrary; and

The taxable value of the subject property on January 1, 2009.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining the equalized taxable value of the subject property is unreasonable or arbitrary;

Whether the equalized taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1; and

The equalized taxable value of the subject property on January 1, 2009.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeals to maintain them.
2. The parcels of real property to which the above captioned appeals pertain are ("the Subject Property") described in the tables below.
3. Taxable value of each parcel of the subject property placed on the assessment roll as of January 1, 2009, ("the assessment date") by the Knox County Assessor, value as proposed in timely protests, and taxable value as determined by the County Board is shown in the following tables:

Case No. 09A 029

Description: S ½ SE 6-29-8 (80.00), Knox County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$45,110.00	\$24,247.60	\$36,065.00
Home Site	\$	\$	\$
Residence	\$	\$	\$
Farm Site	\$	\$	\$
Outbuilding	\$	\$	\$
Total	\$45,110.00	\$24,247,60	\$36,065.00

Case No. 09A 030

Description: NE 1/4, PT NESW E 2 RODS, PT SESW E 2 RODS, PT NWSW 7-29-8 (164 AC), Knox County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$90,385.00	\$62,599.80	\$74,795.00
Home Site	\$	\$	\$
Residence	\$	\$	\$
Farm Site	\$2,040.00	\$	\$2,040.00
Outbuilding	\$3,440.00	\$3,440.00	\$3,440.00
Total	\$95,865.00	\$66,039.80	\$80,275.00

Case No. 09A-031

Description: 8-29-8 NW 1/4 (160 AC), Knox County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$95,345.00. 00	\$93,758.40	\$94,085.00
Home Site	\$	\$	\$
Residence	\$	\$	\$
Farm Site	\$	\$	\$
Outbuilding	\$	\$	
Total	\$95,345.00	\$93,758.40	\$94,085.00

4. Appeals of the County Board's decisions were filed with the Commission.
5. The appeals were consolidated for hearing by order of the Commission.
6. An Order for Hearing and Notice of Hearing issued on June 17, 2010, set a hearing of the appeals for August 17, 2010, at 8:00 a.m. CDST.

7. An Affidavit of Service, which appears in the records of the Commission, establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
8. Taxable value of each parcel for the tax year 2009 is:

Case No. 09A 029

Agricultural land	\$ 36,065.00
Total	<u>\$ 36,065.00</u>

Case No. 09A 030

Agricultural land	\$76,835.00
Improvement	\$3,440.00
Total	<u>\$ 80,275.00.</u>

Case No.09A 031

Agricultural land	\$94,085.00
Total	<u>\$ 94,085.00.</u>

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Reissue 2009).
2. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the

uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2009).

3. “Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.” Neb. Rev. Stat. §77-112 (Reissue 2009).
4. “Actual value, market value, and fair market value mean exactly the same thing.”
Omaha Country Club v. Douglas County Board of Equalization, et al., 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
5. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009).
6. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).
7. Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).
8. Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land.

Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure." Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

9. "Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:
 - (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
 - (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land." Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).
10. "Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution." *Neb. Const.*, Art. VIII, §1.
11. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
12. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be

compelled to pay a disproportionate part of the tax. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

13. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
14. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).
15. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).
16. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
17. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).

18. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).
19. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
20. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).
21. The presumption disappears if there is competent evidence to the contrary. *Id.*
22. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Reissue 2009).

23. Proof that the order, decision, determination, or action appealed from was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g., *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
24. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
25. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).
26. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).
27. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
28. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).
29. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon

property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

30. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982) (determination of equalized taxable value); *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

IV. ANALYSIS

The subject property consists of three agricultural parcels only one of which has an improvement. (E6). The Taxpayer has not placed into dispute the valuation of the improvement. Only the land value is in dispute.

The Taxpayer has asserted that actual value of the subject property as of January 1, 2009, is less than actual value as determined by the County Board and in addition, the Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is not equalized with the taxable value of other real property.

The Taxpayer testified that he believed the amount of wasteland on the subject property should not have been decreased in 2009 from that of prior years. The amount of wasteland identified for the subject property for 2009 was 62.19 acres decreased from 110.80 acres in 2008. This amounts to a decrease of 48.31 acres of wasteland. Wasteland is valued for assessment at \$50 per acre while the valuation for agricultural or horticultural land is valued higher as shown in

the County's exhibit 15 page 1. A table showing this change in wasteland acreage is shown below and results in a total increase in assessed valuation between 2008 and 2009 of \$39,505.

	09A-029		9A-030		09A-031		
	Wasteland Acres	AglandValue	Agland Value	Agland Value	Agland Value	Total	
2008	44.20	\$22,190	63.60	\$58,400	3.0	\$86,890	110.80
2009	21.90	\$36,065	37.99	\$80,275	2.3	\$94,085	62.19
Difference in Wasteland Acreage and Agland Value							
	22.3	\$13,875	25.31	\$18,435	.7	\$7,195	48.31
Total Difference in Waste Acreage 2008 to 2009 - 48.31							
Total Difference in Value 2008 to 2009 - \$39,505							

The County Assessor testified that the amount of acreage classified as wasteland on the subject property was changed between 2008 and 2009 as a result of new assessment procedures which she was required to implement for her assessment of agricultural or horticultural land. The area classified as wasteland in 2008 is shown on Exhibit 11 page 3. The new area classified as wasteland for 2009 is shown on Exhibit 11 page 8. She testified that these new factors included a new soil survey, state soil conversion, and a new GIS mapping system. The soil maps for the subject property are shown on Exhibit 11 pages 4 and 5. Exhibit 11 page 6 details the soil conversion and updates completed in 2004 to the earlier 1997 soil map survey. In the letter, the State Soil Scientist indicates that "...it is expected that resulting distribution of types of soils will be different. The new information is more detailed, accurate and will separate different soils that were combined in the old survey because of scale. Also, over the 50 year period we have learned more about the soils and have better technology to separate and map the soils." *Id.* After the

implementation of these new required factors, the amount of acreage classified as wasteland for the subject property was reduced. The Commission notes that the amount of acreage initially classified as wasteland by the County Assessor and recommended to the County Board was increased by the County Board in its determination at the protest hearing. This increase in the amount of acreage classified as wasteland was without explanation.

The Taxpayer alleged in his testimony that he disagreed that the correct implementation of the new factors had been made by the County Assessor. Secondly, he disagreed with where the lines were drawn by the County Assessor on the maps of the subject property showing soil types. Third, he alleged that the acreage classified as wasteland for 2008 should be restored. Lastly, he disagreed with the acreage classified as wasteland because he alleged the County Assessor could not demonstrate an objective method used to designate the areas of wasteland.

The County Assessors of Nebraska perform their assessor duties against a backdrop of requirements. One such requirement is that the County Assessors abide by the guides in the form of Rules, Regulations and Directives found in the Rules and Regulations promulgated by the Property Assessment Division of the Department of Revenue. Neb Rev Stat 77-1330. Part of the guidance issued by the Property Assessment Division of the Department of Revenue relates directly to the use of soil surveys, GIS system for mapping and soil conversions. The Commission is allowed to take judicial notice of these rules and regulations. Title 350, Nebraska Administrative Code, Nebraska Dept. of Revenue Property Assessment Division. Chapters 14 and 10 of the Regulations set forth the method and procedure that the County Assessors must use in assessing agricultural or horticultural land. In particular, Section 004.08 states the requirements of using “soil surveys as one of the principal tools and sources of information used

in the classification of agricultural or horticultural land in Nebraska.” The Regulations continue with a explanation of the use of Land Capability Groups (LCG) which is “a grouping of various soils according to their limitations for field crops, ...” Section 004.08E. The County Assessor testified that she used the new soil survey, soil conversions and new GIS mapping to accurately determine the acreage on the subject property that should be classified as waste. The Commission finds that the County Assessor’s application of mass appraisal techniques and the use of the new soil survey, the soil conversion and the new GIS mapping system has been done in a professionally approved manner and it gives great weight to its determinations of taxable value for the subject property.

The Taxpayer testified that he believed there were acres on the subject property which qualify for classification as “waste” in accordance with the definition of waste. Title 350, Chapter 2, Section 002.31. In particular, he testified that there were acres on the subject property that could not be grazed due to tree cover. He further alleged that the line demarcating the tree cover should extend out further than shown in such maps used as shown in his Exhibits 25 pages 1 to 3. The County Assessor testified that the maps used by the Taxpayer and shown in Exhibit 25 are not from the new GIS mapping system. The mapping done using the new GIS mapping system showing the subject property is shown on Exhibit 11 page 8. The Taxpayer testified that the number of acres on the subject property classified as waste should revert to the same as was determined by the County in 2008. This testimony is a request and not evidence of actual acres that should be classified as waste.

The County Assessor testified that one of her staff members reviews the maps and soil surveys and draws the lines indicating waste. She stated that the intent is to identify the waste

areas in a consistent manner on all parcels, but there was some degree of judgement that entered into the decision whether land should be classified as waste associated with tree covered areas. She testified that the lines were drawn for wasteland as uniformly as possible.

The Commission has weighed the evidence provided by both parties and gives greater weight to the number of acres classified as waste as determined by the County Assessor and the taxable valuation determined by the County Board.

The Commission does not find merit to the other allegations testified to by the Taxpayer. A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting the valuation methods utilized by county assessor fails to meet his or her burden of proving that the value of the property was not fairly and proportionately equalized or that valuation placed upon the property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

“There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. The presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board. In an appeal to the county board of equalization or to the district court, and from the district court to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere

difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *Id.* Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

The Commission finds that the Taxpayer has not provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and did have sufficient competent evidence to make its determination.

The Commission finds that the Taxpayer has not provided clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

V.

CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decisions of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The decisions of the County Board determining taxable values of the parcels comprising subject property as of the assessment date, January 1, 2009, are affirmed.
2. Taxable value, for the tax year 2009, of each parcel described in an appeal as referenced by the Case No. is:

Case No. 09A 029

Agricultural land	\$ 36,065.00
Total	<u>\$ 36,065.00</u>

Case No. 09A 030

Agricultural land	\$76,835.00
Improvement	\$3,440.00
Total	<u>\$ 80,275.00.</u>

Case No.09A 031

Agricultural land	\$94,045.00
Total	<u>\$ 94,045.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Knox County Treasurer, and the Knox County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2009).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.

5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2009.
7. This order is effective for purposes of appeal on October 6, 2010.

Signed and Sealed. October 6, 2010.

Nancy J. Salmon, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.